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October 19, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 27, 2005

Case Number: TSO-0331

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor in a position that requires him to maintain a security clearance. In November 2004, the individual was arrested for Driving While Intoxicated (DWI). After being apprised of this arrest, the local DOE security office conducted an investigation of the individual. As a part of this investigation, the individual was summoned for an interview by a personnel security specialist in February 2005. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing the information generated by its investigation, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. They informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced 60 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual submitted two exhibits and presented the testimony of eight witnesses, in addition to himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h), (j), and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

In the Letter, the DOE alleges that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse," (paragraph (j)) and that this constitutes an "illness or mental condition, which in the opinion of a psychiatrist, causes, or may cause, a significant defect" in the individual's judgement or reliability (paragraph (h)). As support for these allegations, the Letter cites the DOE psychiatrist's report, issued on June 27, 2005, in which she concludes that the individual suffers from Alcohol Abuse, with inadequate evidence of reformation or rehabilitation, and that this condition causes or may cause a significant defect in his judgement or reliability. In the Letter, the DOE further alleges that prior to his 2004 DWI, the individual was involved in eight alcohol-related legal incidents during the period from 1978 through 1986, including five arrests, two assault complaints and an incident during which he allegedly consumed alcohol and then engaged in an altercation while he was stationed with the U.S. armed forces in a foreign country.

Under paragraph (l), the DOE alleges that the individual "has engaged in unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." In support of this paragraph, the Letter states that the individual continued to use alcohol despite being required to abstain from such use, first by a court of law and then by the terms of his alcohol treatment program.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the

individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraphs (h), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material. Further, the individual has failed to adequately address the security concerns raised by that information. My reasons for these conclusions are set forth below.

At the hearing, the individual readily admitted that he had abused alcohol in the past, and he testified that, in general, he agreed with the DOE psychiatrist’s report. Hearing transcript (Tr.) at 102. The two exhibits that he submitted and the evidence presented by the witnesses who testified on the individual’s behalf were intended to demonstrate his rehabilitation from Alcohol Abuse. In this regard, the individual testified that after his most recent DWI, he attended three court-ordered alcohol education classes at a local college. After he reported this arrest to the DOE, alcohol counselors implemented a treatment program for him that is similar to one that they would recommend for someone suffering from alcohol dependence. Tr. at 116-117, 142. As a part of this program, the individual began attending Alcoholics Anonymous (AA) “two or three times a week” beginning in December 2004. Tr. at 146. He did not obtain a sponsor until November 2005. *Id.* The individual added that he has completely abstained from alcohol since “Easter of ‘05,” or for approximately 13 months as of the date of the hearing. Tr. at 152. Also, the individual received one-on-one alcohol counseling on a monthly basis from November 2004 to April 2005, and then again starting in January 2006. Tr. at 119. He testified that it is his intention to permanently refrain from further alcohol use, Tr. at 164, and that if he feels the urge to drink, he now has a support system, consisting of his family and his AA sponsor, to assist him in maintaining his sobriety. Tr. at 165.

The individual’s alcohol abuse counselor also testified. He said that he instructs his clients about the warning signs of an impending alcohol relapse, that he helps them build support systems that help them maintain their sobriety, and that he is a part of those systems. Tr. at 176. The individual has a good support system, he continued, that consists of his family, AA and his AA sponsor, and the

counselor himself. Tr. at 184-185. The individual is doing well in his rehabilitation, the counselor continued, and he intends to continue those efforts. Tr. at 183. He further testified that he agrees with the DOE psychiatrist's diagnosis of Alcohol Abuse that was set forth in her report. Tr. at 182.

The individual's AA sponsor testified that he had served in this capacity for approximately eight months as of the date of the hearing. Tr. at 26. He indicated that the individual seemed to be genuinely interested in achieving rehabilitation from his alcohol use disorder, and was not attending the meetings simply to fulfill the requirements of his employer's treatment program. Tr. at 18-19. He and the individual have finished the first three steps of AA's twelve step program, and are now working on step four, the sponsor indicated. Tr. at 18. He concluded by stating that the individual "is on the right road." Tr. at 21.

The individual's son, daughter, former supervisor, former brother-in-law and two friends each testified that, except for the glass of wine that the individual admittedly consumed on Christmas 2004 and Easter 2005, they had neither seen the individual drink alcohol nor witnessed any evidence of such consumption since the 2004 DWI. Tr. at 43, 59, 68, 69, 83, 84, 88, 96. In addition, the brother-in-law indicated that the individual was enthusiastic about his recovery and the daughter testified that the individual had changed markedly since quitting drinking, and was now attending church and engaging in more family activities. Tr. at 41-42, 66, 70-71.

After reviewing this testimony and the exhibits submitted by the individual, I am convinced that, as of the date of the hearing, the individual had abstained from alcohol use for approximately 13 months, and had approximately eight months of AA attendance, with a sponsor, in addition to the bi-weekly, and then later, monthly sessions with his alcohol counselor. I further conclude that he is serious about his recovery, and has made substantial progress toward that goal. However, I agree with the DOE psychiatrist that the individual is still not showing adequate evidence of reformation or rehabilitation.

As previously indicated, in her report, the DOE psychiatrist diagnosed the individual as suffering from Alcohol Abuse, with inadequate evidence of rehabilitation or reformation. In arriving at this diagnosis, the DOE psychiatrist used the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (Text Revision) (DSM-IV-TR). Under the guidelines set forth in the DSM-IV-TR, in order to make a diagnosis of Alcohol Abuse, a mental health professional must conclude that at least one of four criteria are met within a 12 month period, and that the patient does not qualify for a diagnosis of Alcohol Dependence.²

The DOE psychiatrist's conclusion in her report that the individual did not suffer from Alcohol Dependence was based on her finding that the individual only met two of the seven criteria for that condition set forth in the DSM-IV-TR during any 12 month period, whereas the presence of three

² In her report, the DOE psychiatrist concluded that the individual in fact met three of the Alcohol Abuse criteria: (i) recurrent alcohol use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); (ii) recurrent substance-related legal problems; and (iii) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance. DOE psychiatrist's report (DOE Exhibit 21) at 19-20.

of the criteria during any such period is necessary for the diagnosis. Specifically, she found that during the period from 1973 to 1983 and 1988 to 1995, the individual met criteria one (tolerance, as defined by a need for markedly increased amounts of alcohol to achieve intoxication or the desired effect) and six (important social, occupational, or recreational activities are given up or reduced because of Alcohol use). She further concluded that the individual met criteria one and seven (continued alcohol use despite knowledge of persistent or recurrent physical or psychological problems caused or exacerbated by alcohol) from 1995 to 2004.

At the hearing, however, the DOE psychiatrist revised her diagnosis, concluding that the individual did in fact suffer from Alcohol Dependence. This revision was based on her conclusion that, in addition to criteria one and seven, the individual met criterion four (persistent desire or unsuccessful efforts to cut down or control alcohol use) during the period from 1995 to Easter of 2005. Tr. at 196.

In her report and at the hearing, the DOE psychiatrist described the manner in which she applied these criteria to the individual. The individual's increased tolerance (criterion one) was indicated by the fact that when he first started drinking, intoxication would result from the consumption of 6 to 8 beers, whereas during "the mid-1980s, 12 beers merely gave him a buzz." DOE psychiatrist's report at 17. The DOE psychiatrist's finding regarding criterion seven was based on the fact that, after undergoing heart surgery in 1995, the individual was placed on Coumadin, a prescription blood-thinner, and was instructed by his doctor to "stay away from" alcohol. Nevertheless, after successfully abstaining for a period of time, he returned to drinking "on a fairly regular basis," drinking to intoxication "about once per year," all while still taking Coumadin. DOE psychiatrist's report at 18.

At the hearing, the DOE psychiatrist testified about the individual's failed attempts to stop drinking. First, she referred to statements made by the individual's daughter both to investigators and during the hearing that the individual unsuccessfully attempted to stop drinking on several occasions because it was causing marital problems, and again after his father died in 1992 and after his 2004 DWI. Tr. at 194-195. In addition, she pointed out that the individual stopped drinking for approximately two years after his heart surgery in 1995 in accordance with his doctor's instructions, but eventually resumed his alcohol consumption. Tr. at 195. Finally, the DOE psychiatrist cited the daughter's testimony at the hearing that after she posted bail for the individual after his 2004 DWI arrest, the individual told the daughter that "That's the last." Tr. at 195. The DOE psychiatrist interpreted this statement to mean that the individual intended to stop drinking. *Id.* However, during Christmas 2004 and Easter 2005, the individual again consumed alcohol. She concluded that these instances adequately supported her application of criterion four.

The DOE psychiatrist further concluded that the individual was not demonstrating adequate evidence of reformation or rehabilitation. In her report, she stated that, in order to exhibit sufficient evidence of rehabilitation, the individual would have to produce evidence of weekly attendance at AA for a minimum of 100 hours, with a sponsor, over a period of one year, plus an additional year of complete abstinence from alcohol and all other non-prescription mind-altering substances, for a total of two years of sobriety. At the hearing, she indicated that although the individual was "on the right track," his 13 months of sobriety was insufficient, and that she would require the full two years of abstinence before she could conclude that the individual was rehabilitated or reformed. Tr. at 198-199.

In making their decisions in these access authorization cases, hearing officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing*, Case No. VSO-0146, August 31, 1997; *Personnel Security Hearing*, Case No. VSO-0027, August 14, 1995. In this case, although I find that the DOE psychiatrist's conclusions are adequately supported by the record, I am troubled by the change in her diagnosis. Considerations of fairness generally dictate that clearance holders be given sufficient notice of the allegations against them to allow them to adequately prepare for their hearings. In this case, however, I conclude that the individual was not unduly prejudiced by the change in diagnosis. First, the Alcohol Abuse diagnosis clearly put the individual on notice that all aspects of his alcohol consumption through the years would be at issue. Second, and more importantly, in her report the DOE psychiatrist set forth the same course of action for rehabilitation or reformation that she would have prescribed had she concluded at that time that the individual suffered from Alcohol Dependence. In doing so, she cited the individual's lengthy history of excessive drinking and his meeting some of the criteria for Alcohol Dependence. DOE psychiatrist's report at 21. As of the date of the hearing, the individual had not satisfied these requirements. Therefore, even if the DOE psychiatrist had not changed her diagnosis, I could not conclude that the individual has demonstrated adequate evidence of rehabilitation or reformation.

This is because during a period of over 20 years of sometimes-excessive alcohol consumption, the individual has been arrested or had complaints filed against him with law enforcement authorities on at least nine occasions. Each of these incidents was directly or indirectly related to his drinking. Moreover, during this period, the individual has unsuccessfully attempted to stop drinking on a number of occasions, including once subsequent to his heart surgery in 1995, after having been warned by his doctor that continued consumption of alcohol while taking Coumadin could have serious adverse effects on his health. Given these circumstances, I agree with the DOE psychiatrist's finding that two years of documented sobriety are necessary for an adequate showing of reformation or rehabilitation in this case. Consequently the DOE's security concerns under paragraphs (h) and (j) remain unresolved.

Similarly, I find that the individual has also failed to adequately address the DOE's concerns under paragraph (l). As previously indicated, those concerns are based on the individual's consumption of alcohol after his 2004 arrest, which violated the terms of a court order and the requirements of his treatment program. Given the gravity of the individual's diagnosis, I believe these incidents to have been symptomatic of his dependence on alcohol. In the absence of sufficient rehabilitation or reformation from this condition, I also conclude that the security concerns under paragraph (l) remain unresolved.

V. CONCLUSION

Based on the factors discussed above, I find that the individual has failed to adequately address the security concerns set forth in the Notification Letter. Accordingly, I conclude that he has not demonstrated that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's access authorization

should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: October 19, 2006

